

**THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION**

No. 5:09-cv-00069-D

QUALITY FIRST PRODUCE, INC.,)
)
 Plaintiff/Judgment Creditor,)
)
 v.)
)
COSMOS CORPORATION,)
doing business as Fruit Merchant, and)
MUHAMMAD SHARIF, *individually*,)
)
 Defendants/Judgment Debtors.)

ORDER

This matter is before the Court on Plaintiff/Judgment Creditor's motion to compel [DE-35]. No response has been filed, and the matter is ripe for decision.

On March 11, 2009, the Court entered a Consent Judgment in favor of Plaintiff in this matter. [DE-18.] Subsequently, Plaintiff has proceeded to collect on its Judgment and, in furtherance thereof, on December 16, 2011, mailed to Defendants post-judgment requests for production, interrogatories, and a notice of deposition of Defendant Muhammad Sharif. Defendants failed to respond to the discovery requests or appear for deposition, and Plaintiff filed the instant motion.

An order compelling discovery is appropriate where a party has failed to respond to discovery requests and the movant certifies that a good faith attempt was made to resolve the matter without court action. Fed. R. Civ. P. 37(a)(1) & (3). Furthermore, a court may order sanctions where a party fails to respond to discovery requests or fails to appear for a properly noticed deposition and "must require the party failing to act . . . to pay the reasonable expenses,

including attorney's fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust." *Id.* at 37(d)(1)(A) & (3).

The Court finds that Plaintiff has satisfied the requirements of Rule 37, including providing proper notice to Defendants of the instant motion, and that it is entitled to an order compelling Defendants to respond to the discovery requests and compelling Defendant Muhammad Sharif to appear for deposition. Accordingly, Plaintiff's motion to compel is **GRANTED** as follows:

- (1) Defendants shall respond to the requested discovery no later than **July 23, 2012**;
- (2) Defendant Muhammad Sharif shall appear for deposition to occur no later than **July 23, 2012**, at a date, time, and location as properly noticed by Plaintiff;
- (3) Plaintiff shall file any motion for costs, including an affidavit setting forth its reasonable attorney's fees and expenses associated with the filing of this motion and the previously scheduled deposition of Muhammad Sharif, no later than **July 16, 2012**; and
- (4) Defendants shall file any response thereto no later than **August 2, 2012**.

Defendants are cautioned that a failure to comply with this order may result in sanctions, in addition to any award of costs, pursuant to Rule 37.

This 2nd day of July 2012.

A handwritten signature in black ink, appearing to read "David W. Daniel", written over a horizontal line.

DAVID W. DANIEL
United States Magistrate Judge